

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0326P**

**Sales & Use Tax**

**For the month of February 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late filing of a monthly sales tax return for the month of February 2003.

The taxpayer is a company located in Indianapolis.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the late penalty should be waived as the error was the Post Office's error and not the taxpayer. The taxpayer mailed the tax return on the due date. The taxpayer says the Post Office erred as the Post Office put the next day's date on the mailing resulting in the return being one day late.

State of Indiana tax regulations require the Department to follow the federal postmark in determining timeliness of a particular mailing. In the instant case, the postmark shows the tax return was mailed one day late, and therefore, the Department considers the mailing a late filing.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or

inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.